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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,153	04/20/2005	Walter Messier	GENO20031PCTUS	2031
25871 7590 06/27/2007 SWANSON & BRATSCUN, L.L.C. 8210 SOUTHPARK TERRACE LITTLETON, CO 80120			EXAMINER SALMON, KATHERINE D	
			ART UNIT 1634	PAPER NUMBER
			MAIL DATE 06/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-5, drawn to a method of identifying a nucleotide change in a TLR4 polynucleotide.

Group II, claim(s) 6-10, drawn to a method of identifying a therapeutic agent that reduces sensitivity to Gram-negative bacterial infection.

Group III, claim(s) 11, drawn to a therapeutic agent.

Group IV, claim(s) 12, drawn to a polynucleotide.

Group V, claim(s) 13, drawn to a polypeptide.

2. RESTRICTION REQUIREMENT: Group IV and V named above is subject to sequence restriction. For Group IV, applicant must further select a specific polynucleotide from SEQ ID 1, 4, 7, 10, 13, 16, and 19. For Group V, Applicant must further select a specific polypeptide from SEQ ID No. 3, 8, 9, 12, 15, 18, and 21. The polynucleotide and polypeptide sequences do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the description fails

to disclose that the polymorphic sequences share a common property or activity. While each polynucleotide sequence may serve to isolate its own respective full length DNA, due to the lack of homology between the sequences, one polynucleotide sequence cannot be used to amplify the same region of DNA as another.

Moreover, since the polynucleotide and polypeptide sequences are not homologous to each other, they fail to share a common structure, i.e., a significant structural element. The sugar-phosphate backbone cannot be considered a significant structural element, since all nucleic acid molecules share it. Therefore, the polynucleotide and polypeptide sequences do not share any significant structural element and cannot be considered as having the same or corresponding technical feature. Therefore, the polymorphic sequences do not share any significant structural element and cannot be considered as having the same or corresponding technical feature.

There mere fact that the polymorphic sequences are derived from the same source is not sufficient to meet the criteria for unity of invention. The polymorphic sequences fail to share a common property or activity and fail to share a common structure. Since neither of these two requirements is met, the group of polymorphic sequences claimed does not meet the requirement of unity of invention.

3. The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. According to PCT Rule 13.2, unity of

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invention exists only when a shared same or corresponding special technical feature is a contribution over the prior art. The technical feature, which is shared by Groups I-V, is a method of comparing the TLR4 polynucleotide of a human and an Old World monkey. Groups I-V do not share a special technical feature over the art because Smirnova et al. (Genome Biology 2000 Vol 1 p. 1) teaches a method of comparing the TLR4 polynucleotide of a human and an Old World monkey (Figure 4 comparison of sequence variations of human, chimpanzee and baboon). Therefore the method of comparing the TLR4 polynucleotide of a human and an Old World monkey fails to make a contribution over the prior art; therefore, there is no special technical feature between Groups I-V.

4. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product

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claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions

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unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

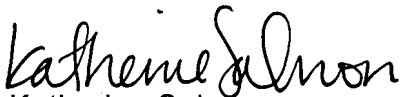
6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine Salmon whose telephone number is (571) 272-3316. The examiner can normally be reached on Monday-Friday 8AM-430PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Katherine Salmon

Examiner

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/Carla Myers/

Primary Examiner, Art Unit 1634